

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

For Approval and Signature:

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JJJ

3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

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SHIVABHAI SOMABHAI CHUNARA

Versus

DIVISIONAL CONTROLLER  
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Appearance:

MR HK RATHOD for Petitioner

MRS VASAVDATTA BHATT for Respondent No. 1  
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CORAM : MR.JUSTICE H.L.GOKHALE

Date of decision: 14/09/98

#### ORAL JUDGEMENT

Heard Mr.Rathod for the petitioner. RULE on the petition returnable forthwith. Mrs.Bhatt appears for the respondent. She waives service of Rule on behalf of the respondent. Mrs.Bhatt has filed a reply also. Heard the learned advocates. They have made their submissions.

2. The petitioner is a bus driver. He along with another bus driver one Ravjibhai Chhotabhai were asked to drive two buses on contract basis for some period. Since that was a job entrusted on contract basis, no conductor was deployed in the buses. In the bus which was run by Ravjibhai, four passengers were found in excess of the contracted capacity, whereas in the case of the petitioner, when the bus was checked, five adults and 25 minors were found in excess. Therefore, an amount of Rs.180/- was recovered from those passengers in the case of Ravjibhai and an amount of Rs.900/- in the case of the petitioner. After the departmental enquiry, both these persons were directed to be dismissed. The reference filed by Ravjibhai reached first for hearing before the learned Judge who heard the reference and came to the conclusion that the allegation against the employee concerned had been established. There were nine past adverse entries in the record of Ravjibhai and hence the learned Judge directed reinstatement though with 40% backwages. That order was challenged in this court by

the petitioner by way of filing Special Civil Application No.10205 of 1996. My brother J.N.Bhatt, J. by his order dated 6.2.1996 dismissed the petition and confirmed the order passed in reference.

3. The reference sought by the present petitioner reached for hearing subsequently. In that proceeding, the order passed in the case of Ravjibhai as well as the one passed by the High Court was brought to the notice of the learned Judge. That can be seen from the award itself. It was also pointed out to the learned Judge hearing the case of the petitioner that there are only three past adverse entries in his long service of 19 years. In the circumstances, what was expected of the learned Judge was to follow the same yardstick as was followed in the case of Ravjibhai. The learned Judge, however, rejected that reference. Hence this petition.

4. Mr.Rathod appearing for the petitioner brought to my notice the similarity in both the matters on facts, and the fact that the present petitioner has a better service record. Mrs.Bhatt, on the other hand, pointed out that, in Ravjibhai's case, the Corporation was to suffer a loss of Rs.180/-, whereas in the case of the petitioner, it would have been a loss to the tune of Rs.900/-. Be that as it may, it is not the amount that is so important. The incidents are by and large identical and, when the petitioner is having a still better record and the order passed by the High Court in the earlier matter was shown to the learned Judge, he was expected to follow the very same yardstick. In the circumstances, this petition will have to be allowed. RULE is accordingly made absolute. The impugned award is set aside to the extent the relief is declined to the petitioner and it will be substituted by the award of reinstatement with 40% backwages and continuity of service. There will be no order as to costs. The respondent will reinstate the petitioner by the first working day of October 1998 and the arrears of backwages will be cleared by the end of October 1998.

(KMG Thilake)

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